

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

TATYANA LYSYY, et al.,

Plaintiffs,

v.

DEUTSCHE BANK NATIONAL
TRUST COMPANY, et al.,

Defendants.

CASE NO. C24-0062JLR

ORDER

I. INTRODUCTION

The court ordered the parties to file trial briefs and proposed findings of fact and conclusions of law by no later than June 16, 2025. (Pretrial Order (Dkt. # 132) at 17.) Plaintiffs, however, failed to file either document before that deadline. (*See generally* Dkt.) Accordingly, for the reasons set forth below, the court ORDERS Plaintiffs to SHOW CAUSE why the court should not impose dispositive sanctions pursuant to

1 Federal Rule of Civil Procedure 41(b) or the court's inherent authority for their failure to
2 comply with the court's pretrial order.

3 II. BACKGROUND

4 On June 26, 2024, the court entered a scheduling order in which it set trial in this
5 matter on June 23, 2025, and set the deadline for the parties to file trial briefs, proposed
6 jury instructions, and proposed voir dire on June 16, 2025. (Sched. Order (Dkt. # 69) at
7 2.) On May 27, 2025, the court granted Defendants' motion to strike the jury trial,
8 designated the trial as a bench trial, struck the deadline for the parties to file jury
9 instructions and voir dire, and ordered the parties to file proposed findings of fact and
10 conclusion of law by no later than June 16, 2025. (5/27/25 Order (Dkt. # 123) at 5-6.)
11 On June 2, 2025, the parties timely filed an agreed proposed pretrial order in which they
12 specified that "[t]rial briefs and proposed findings of fact and conclusions of law shall be
13 submitted to the [c]ourt on or before June 16, 2025." (Prop. Pretrial Order (Dkt. # 128) at
14 16.) Plaintiffs' counsel approved the proposed pretrial order before it was filed. (*Id.* at
15 17.) On June 9, 2025, the court entered the pretrial order. (Pretrial Order.)

16 Defendants timely filed their trial brief and proposed findings of fact and
17 conclusions of law on June 16, 2025, in accordance with the court's orders. (Def. Trial
18 Br. (Dkt. # 138); Def. Prop. FOFCOL (Dkt. # 139).) Plaintiffs, however, have failed to
19 file either of these key pretrial documents, despite being on notice of the June 16, 2025
20 deadline since June 26, 2024 (for trial briefs) and May 27, 2025 (for proposed findings of
21 fact and conclusions of law). (*See generally* Dkt.)
22

1 This is not the first time Plaintiffs have failed to comply with court orders and
2 with their litigation obligations. On July 18, 2024, Plaintiffs failed to appear for their
3 depositions and failed to respond to their attorney's inquiries about their absence. (*See*
4 9/25/24 Order (Dkt. # 83) at 2-3.) The court later ordered Plaintiffs to pay Defendants
5 \$4,500 in attorneys' fees and costs as a sanction for their failure to appear. (*Id.* at 5-7.)
6 Then, on May 7, 2025, Plaintiffs failed to appear for a judicial settlement conference in
7 violation of U.S. Magistrate Judge Michelle L. Peterson's order requiring all parties, their
8 counsel, and their relevant decision-makers to personally attend the conference. (*See*
9 Findings and Recommendation (Dkt. # 133) at 2-3 (quoting Settlement Conf. Order (Dkt.
10 # 103))).) Magistrate Judge Peterson subsequently held a contempt hearing, which
11 Plaintiffs' trial counsel failed to attend. (*See id.* at 3.) After that hearing, Magistrate
12 Judge Peterson recommended that the court (1) find Plaintiff Vasiliy Lysyy in civil
13 contempt for failure to comply with the settlement conference order and (2) order Mr.
14 Lysyy to pay Defendants their reasonable attorneys' fees and costs attributable to the
15 failed settlement conference. (*Id.* at 8-9.¹)

16 III. ANALYSIS AND ORDER

17 A federal court may dismiss a case for failure to comply with a court order under
18 Federal Rule of Civil Procedure 41(b) and its inherent powers. Under Rule 41(b), the
19 district court "may dismiss an action for failure to comply with any order of the court."
20 *Ferdik v. Bonzelet*, 963 F.2d 1258, 1260 (9th Cir. 1992) (citing Fed. R. Civ. P. 41(b)).

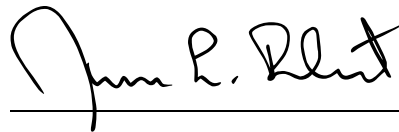
21
22 ¹ The parties may file objections to Magistrate Judge Peterson's findings and
recommendations by no later than June 23, 2025. (*Id.* at 9.)

1 The decision to dismiss a case under Rule 41(b) is within the district court’s discretion
2 and will “not be disturbed unless there is ‘a definite and firm conviction that the court . . .
3 committed a clear error of judgment in the conclusion it reached upon a weighing of the
4 relevant factors.’” *Id.* (quoting *Malone v. U.S. Postal Serv.*, 833 P.2d 128, 130 (9th Cir.
5 1987)). Under its inherent powers, meanwhile, “[a] district court may, among other
6 things, dismiss a case in its entirety, bar witnesses, exclude other evidence, award
7 attorneys’ fees, or assess fines.” *Am. Unites for Kids v. Rousseau*, 985 F.3d 1075, 1088
8 (9th Cir. 2021). To impose sanctions pursuant to its inherent powers, “a district court
9 must find either: (1) a willful violation of a court order; or (2) bad faith.” *Id.* at 1090.
10 When determining whether a dispositive sanction is appropriate under either Rule 41(b)
11 or its inherent powers, the court must consider: (1) the public’s interest in the expeditious
12 resolution of litigation; (2) the court’s need to manage its docket efficiently and
13 effectively; (3) the risk of prejudice to the party seeking sanctions; (4) the public policy
14 in favor of considering cases on the merits; and (5) the availability of less drastic
15 sanctions. *See Ferdik*, 963 F.2d at 1260-61; *Leon v. IDX Sys. Corp.*, 464 F.3d 951, 958
16 (9th Cir. 2006).

17 The court undertakes substantial preparation before it presides over a bench trial.
18 Trial briefs and proposed findings of fact and conclusions of law are critical to the court’s
19 understanding of the factual and legal issues that are likely to emerge during trial.
20 Consequently, Plaintiffs’ failure to timely file trial briefs and proposed findings of fact
21 and conclusions of law risks the court’s ability to be fully prepared for trial. Plaintiffs’
22 failure to file these documents also places Defendants at a disadvantage because Plaintiffs

1 will have the opportunity to review Defendants' trial briefs and proposed findings of fact
2 and conclusions of law as part of their own trial preparation while depriving Defendants
3 of that same benefit. Therefore, the court ORDERS Plaintiffs to SHOW CAUSE, by no
4 later than **noon on Friday, June 20, 2025**, why the court should not dismiss this matter
5 as a sanction for their failure to file trial briefs and proposed findings of fact and
6 conclusions of law in violation of the court's pretrial order. Failure to timely respond to
7 this order to show cause will result in the dismissal of this matter with prejudice.

8 Dated this 17th day of June, 2025.

9
10 

11 JAMES L. ROBART
12 United States District Judge
13
14
15
16
17
18
19
20
21
22